IN THE

Supreme Court of the United States

October Term, 1978

No. 78-727

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY (SEPTA),
Petitioner,

vs.

CLARE IMMACULATA KENNY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS.

TABLE OF CITATIONS.

Cases:

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SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY (SEPTA),

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v.

CLARE IMMACULATA KENNY,

Respondent.

On Appeal From the Third Circuit Court of Appeals

MOTION TO DISMISS AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, pursuant to Rule 16 of the revised Rules of the Supreme Court of the United States, moves that this Appeal be dismissed on the grounds that the Third Circuit Court of Appeals correctly applied the law of Pennsylvania when rendering its decision in the present case. Furthermore, there is no warrant for granting the request for a Writ of Certiorari.

Jurisdiction

The jurisdiction of this Court is invoked by Petitioner pursuant to 28 U.S.C. 1254(1) and Rule 19(1)b of the Rules of the Supreme Court of the United States.

Petitioner seeks a Writ of Certiorari to the Court of Appeals for the Third Circuit to review its Order and decision entered on July 18, 1978.

Petitioner bases the jurisdiction herein on the allegation that the Court of Appeals below has decided an important state question in conflict with applicable state law.

The Writ should be dismissed on the ground that the Court of Appeals for the Third Circuit correctly applied the applicable law of the State of Pennsylvania in its Opinion and Order dated July 18, 1978.

Questions Presented

I. Whether the Court of Appeals for the Third Circuit Was Correct in Holding That Under Pennsylvania Law a Possessor Of Land Who Holds It Open to the Public For Entry For Business Purposes, Which in This Case is a Common Carrier, is Responsible For Injuries To Its Patrons Caused By the Negligent or Intentionally Harmful Acts of Third Persons Where the Possibility or Likelihood of Such Activity Could Reasonably Have Been Foreseen or Anticipated And Failed to Exercise Reasonable Care to Take Precautions Against Such Conduct.

II. Whether the Court of Appeals for the Third Circuit In Attempting to Ascertain State Law Governing a Diversity Case Under Review is Correct When It Considers and Applies the Recent Decisions of the Highest Appellate Court in Pennsylvania, Which Controls the Legal Questions Involved.

Restatement of the Case

Petitioner's statement of the case (2-5) does not accurately or fully set forth the essential testimony from the record in several material respects. The indisputable facts are cited *infra.*

The Petitioner, SEPTA, is an entity created by the Pennsylvania Legislature to provide mass transit in the greater Philadelphia area. On or about October 2, 1975 SEPTA operated, maintained, controlled and was in possession of a certain three story structure known as the Fairmount Avenue Station of the Frankford Elevated Line in Philadelphia. SEPTA passengers are required to pay their fare at the cashier's booth on the ground level. The cashier's booth is an enclosed structure on three side with a glass opening in the front for receipt of fares. Passengers waiting for a train at this location are required to wait on an elevated platform approximately three stories above the ground level. The only employee of the Petitioner is located in the cashier's booth on the ground level. There are no communication or security devices located on the elevated platform. SEPTA had no security personnel or employees on the Frankford Elevated Line for passenger protection.

At approximately 9:00 p.m. on October 2, 1975 Respondent, Clare Kenny, paid her fare at the ground level cashier's booth and climbed three flights of steps to the elevated platform and was waiting for a northbound train. The assailant was waiting for a southbound train on the opposite side of the tracks and crossed over to Respondent's side by use of a connecting tunnel between the northbound and southbound platforms. This platform is out of the view of the cashier's booth.

Upon arriving on the northbound platform, the assailant dragged the Respondent approximately 150 feet to the south

end of the northbound platform where he beat and raped her. The rape incident took place over a period of twenty minutes. During this time, Clare Kenny's screams were heard by an unknown person in the neighborhood who called the police. As a result of the radio call to the police, the assailant was apprehended on the northbound platform.

Petitioner's employee in the cashier's booth on the ground level testified that he heard no screams by the Respondent and admitted that he had a portable radio playing in the booth which he said was permitted by his employer.

Detectives from the Philadelphia Police Department who investigated the scene of the crime testified that the area at the south end of the platform was dark and the electric lights were not lit. One detective who arrived after the attack testified that it was necessary to use a one-half mile flashlight to illuminate the area to complete his investigation. Doctor Robert Shellow, an expert on transit security, testified for Respondent that his examination of the lighting at the south end of the platform revealed that the sockets for the light standards were rusted.

Mr. Frank Berdan, Operations Manager of the Petitioner, testified that SEPTA does not concern itself with passenger security and that during the past ten years SEPTA has done nothing in the way of affirmative action to implement a policy of passenger protection on its transit lines.

Mr. Robert King testified for Petitioner that he has been employed by SEPTA as its Director of Security for the past twenty-one years and during this period of time his office maintained a report of every criminal incident committed on SEPTA's facilities. Mr. King testified that for the past twenty-one years it was not his duty or function to provide for the protection of passengers or patrons' security and he has no

knowledge of anyone from SEPTA who is in charge of passenger protection or security.

Both Mr. Robert King and Mr. Frank Berdan testified that they did not know of any program employed by SEPTA for passenger security or protection and that SEPTA did not employ any individuals or security systems specifically designed for the protection of SEPTA passengers. Mr. Robert King further testified that in 1973 and 1974 he participated in a special program conducted at the Carnegie-Melon Institute, Pittsburgh, Pennsylvania that dealt exclusively with the security of patrons on mass transit systems. Although Mr. King was familiar with the programs and techniques that are utilized to protect patrons on urban public transportation systems, these programs and techniques were not adopted by SEPTA. Although there was testimony that no criminal incidents had been reported at the Fairmount Station in the three years preceding the incident herein, there was substantial testimony of criminal assaults elsewhere on the Frankford Elevated Line and that SEPTA had knowledge of these criminal assaults.

Mr. Ivan Levin, Special Assistant to the Regional Director, Department of Justice, Law Enforcement Assistance Administration, produced an application for federal funds wherein the Petitioner, SEPTA, provided statistical information and other data to the United States Department of Justice concerning the increase in the crime rate on the SEPTA transit system, particularly the Frankford Elevated Line. This application was introduced by Respondent and admitted into evidence to establish notice on the part of SEPTA of criminal assaults on the Frankford Elevated Line.

Although Respondent attempted to introduce statistical surveys relating to the type of crime and the location of such criminal activity throughout the Frankford Elevated Line, the Court sustained Petitioner's objections on the grounds that such information was not relevant. Notwithstanding Petitioner's objections, Respondent introduced a joint policy statement that was prepared between the Mayor of the City of Philadelphia and the Chairman of the Board of Petitioner wherein it was clearly stated that "the occurrence of crime on the SEPTA Transit System is intolerable . . . and SEPTA's passengers and employees must be made entirely safe. . ."

Respondent's evidence concerning the application to the Department of Justice, Law Enforcement Assistance Administration, together with the statements contained in the joint policy and the testimony of Mr. Robert King and Mr. Frank Berdan, Respondent established that SEPTA had knowledge of criminal activity throughout its Frankford Elevated Line. Petitioner's own testimony by its Director of Security and Operations Manager clearly established that Petitioner provided no security measures or programs at any location on the Frankford Elevated Line which would include those stations wherein criminal assaults had taken place prior to October 2, 1975.

Special Interrogatories were jointly prepared by counsel for Petitioner and Respondent and thereafter submitted to the jury. Through its answers to the Special Interrogatories, the jury found that Petitioner had knowledge of the dangerous condition of the platform and that Petitioner failed to adequately protect against it and that this negligence was the proximate cause of Respondent's injuries.

The Court of Appeals for the Third Circuit relied on recent decisions of the Pennsylvania Supreme Court which specifically adopted Section 344, Restatement of Torts 2d.

Accordingly, the Court of Appeals for the Third Circuit held that it was a question of fact for the jury to determine as to whether the Petitioner knew or had reason to know that there was a likelihood of conduct on the part of third persons in general which was likely to endanger the safety of its business patrons and whether Petitioner's past experience was such that it should have reasonably anticipated the criminal or tortious conduct on the part of third persons. The Court of Appeals further held that it was a question of fact for the jury to determine as to whether adequate measures were taken by Petitioner to prevent acts on the part of third persons which might injure patrons on the premises of Petitioner.

The jury returned its verdict in favor of Respondent and against Petitioner in the amount of $18,000.00. Additional defendant, City of Philadelphia, was exonerated.

SEPTA now petitions this Honorable Court for a Writ of Certiorari and asserts in support of this petition that the Court of Appeals decided an important State question in conflict with applicable Pennsylvania law. SEPTA asserts that it can only be held responsible or liable for the tortious acts of third persons where there are grounds to anticipate that a particular offending party indicates a disposition to engage in violent behavior and that SEPTA has no duty to provide passenger protection at a sepcific location unless there were similar crimes or prior tortious acts committed at the specific, particular location.

The legal position asserted by SEPTA is not consistent with the recent decisions of the Pennsylvania Supreme Court, under the particular facts and circumstances of the present case.

Reasons for Denying the Petition

Petitioner specifically asserts:

(1) That the holding of the Court of Appeals for the Third Circuit that a public transportation authority may be held liable for the tortious acts of third persons whose acts could not have reasonably been anticipated conflicts with controlling Pennsylvania law.

At the outset, Petitioner does not accurately set forth the correct holding of the Court of Appeals for the Third Circuit. In the opening paragraph of the Opinion of the Court of Appeals for the Third Circuit (A15), it was clearly stated that:

> "In this diversity case, we are guided by Pennsylvania law which does not hold the proprietor of a business establishment responsible for injuries to its patrons caused by criminal conduct of a third party unless the possibility or likelihood of criminal activity could reasonably have been foreseen or anticipated. . ."

In its Opinion (A16-A17) the Court of Appeals clearly set forth that where the possessor of land may have reason to know that there is a likelihood of conduct on the part of third persons generally which is apt to endanger the safety of patrons, the owner may be under a duty to take precautions against such conduct. Further, the Court of Appeals pointed out in its Opinion that the trial court erred in this case when it narrowed the ambit of liability by looking to the expectations of SEPTA as they applied to a specific offender at the specific location. The Court of Appeals held the duty to protect its patrons is not determined by whether SEPTA had reasonable ground to expect violence directed toward the plaintiff by the particular assailant but whether the Authority could reasonably have expected criminal activity from anyone at its station, citing therein *Morgan v. Bucks Associates*, 428 F.Supp.

546 (E.D. Pa. 1977); *Ford v. Jeffries*, ... Pa. ...., A.2d 111 (1977); *Anderson vs. Bushong Pontiac Co.*, 404 Pa. 382, 171 A.2d 771 (1961).

Accordingly, it was a question of fact for the jury to determine whether, from the evidence presented at time of trial, SEPTA had reasonable ground to know or have reason to believe there was a likelihood of conduct on the part of third persons generally, and whether SEPTA failed to take reasonable or adequate measures to prevent such conduct. The jury in the present case made its determination of facts and entered a verdict in favor of plaintiff.

Therefore, the Court of Appeals correctly applied the law of Pennsylvania, under the particular facts and circumstances of this case, which holding does not violate this Court's decision in *Erie R.R. v. Thompkins*, 304 U.S. 64 (1938).

The Court of Appeals, in its Opinion (A17-A18), recited that SEPTA may have failed to protect the plaintiff in several ways and that the jury was entitled to determine whether SEPTA was negligent because of insufficient maintenance and whether the inadequate maintenance was a substantial factor in bringing about harm to the plaintiff.

Furthermore, the Court of Appeals, in its Opinion (A18), recited that SEPTA's sole employee on the premises was located on the street level and was permitted by SEPTA to play a radio while on duty which may have impaired his hearing ability. The location of the cashier's booth, coupled with other factors including the screams by the plaintiff which were unnoticed by SEPTA's employee, the jury may well have found that SEPTA owed the plaintiff at least some concern citing therein *LaSota v. Philadelphia Transportation Co.*, 421 Pa. 386, 219 A.2d 296 (1966).

In the present case, SEPTA occupied a dual role for the purpose of determining its duty and liability. Clearly, SEPTA was a business proprietor and possessor of land that was open to the public for entry for business purposes because it operated, maintained, possessed and was in control of the elevated platform at the Fairmount Station of the high speed line. Also, SEPTA,[1] Southeastern Pennsylvania Transportation Authority, was a common carrier and an entity created by the Pennsylvania legislature to provide mass transit in the greater Philadelphia area.

It is well established law in the Commonwealth of Pennsylvania that a common carrier must exercise the highest degree of care for the protection of its passengers; and this has been described as "the utmost caution characteristic of very careful and prudent men or the highest possible care consistent with the undertaking." W. Prosser, *Handbook of the Law of Torts* § 34 at 180 (4th ed. 1971). Pennsylvania cases in accord with Prosser's comments speak in terms of "highest degree of care". *Archer v. Pittsburg Rys. Co.*, 349 Pa. 547, 37 A.2d 539 (1944); *Connolly v. Philadelphia Transportation Co.*, 420 Pa. 280, 216 A.2d 60 (1966); *Sommers v. Hessler*, 227 Pa. Super. 41, 323 A.2d 17 (1974). A common carrier must exercise this highest degree of care to passengers and those who intend to become passengers. *Lynn v. Pittsburg & L.E.R. Co.*, 267 Pa. 41, 110 A 271 (1920).

The Restatement of Torts 2d sets forth this responsibility of carriers to its passengers for harmful acts of third persons at section 314 A-1(a), where it is stated:

[1] See Metropolitan Transportation Authorities Act of 1963, § 2, 4, PA. STAT. ANN. tit. 66, § 2002, 2003 (Cum. Supp. 1978-1979).

> A common carrier is under a duty to its passengers to take reasonable action:
>
> (a) to protect them against unreasonable risk of physical harm.

Comment d of this section states:

> The duty to protect the other against unreasonable risks of harm . . . extends also to risks arising from . . . acts of third persons, whether they can be innocent, negligent, intentional or even criminal.

Pennsylvania appellate court have cited Section 314 of the Restatement of Torts, 2d, to determine the responsibility of a common carrier to its patrons in *Stupka v. People Cab Co.*, 437 Pa. 512, 260 A.2d 759 (1970); *Geiger v. Reading*, 47 D.C. 2d 101 (1969).

A common carrier's liability for the acts of third persons may also be predicated upon Section 302 B of the Restatement of Torts, 2d, because of its omission to act or its nonfeasance against harmful acts of third persons toward its passengers. Section 302 B provides:

> An act or omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.

Pennsylvania appellate courts have predicated their decisions, in part, upon this section of the Restatement in the following cases: *Liney v. Chestnut Motors, Inc.*, 421 Pa. 27, 218 A.2d 336 (1966); *Dolan v. Philadelphia Transportation Co.*, 271 Pa. Super. 308, 271 A.2d 881 (1970); *Geiger v. Reading Co., supra.*

The case law in Pennsylvania and other jurisdictions reflect the responsibility of a carrier to its passengers for the harmful acts or conduct of third persons.

Petitioner recites the cases of *Kerns v. Pennsylvania Reading Railroad Co.*, 366 Pa. 477, 77 A.2d 381 (1951); *Woods v. Phila. Rapid Transit Co.*, 260 Pa. 481, 104 A 69 (1918); and *Hillebrecht v. Pittsburgh Railway Co.*, 55 Pa. Superior Ct. 204 (1913) as the body of law which should be applied in the present case. However, the cases cited by Petitioner clearly state that a duty may be placed upon a common carrier to protect its passengers if it has actual knowledge of a dangerous condition or if from the *particular facts and circumstances surrounding the incident, it could reasonably anticipate harm to its passengers.* (emphasis added)

Based upon the decisions relied upon by Petitioner, it is clear that from the particular facts and circumstances surrounding an incident, SEPTA could have reasonably anticipated the harm to Clare Kenny in the present case.

The Court of Appeals for the Third Circuit clearly stated in the beginning of its Opinion that it was guided by Pennsylvania law in this diversity case and set forth the particular legal issue governing this case:

> In this diversity case, we are guided by Pennsylvania law which does not hold the proprietor of a business establishment responsible for injuries to its patrons caused by criminal conduct of a third party unless the possibility or likelihood of criminal activity could reasonably have been foreseen or anticipated. (A15)

Respondent presented to the District Court and again in its Brief to the Court of Appeals for the Third Circuit the decision in *Moran v. Valley Forge Drive-In Theater, Inc.*, 431 Pa. 432, (1968), citing with approval Section 344 of the RESTATEMENT (SECOND) OF TORTS (1965) which reads:

> A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to
>
> (a) discover that such acts are being done or are likely to be done, or
>
> (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.

Comment (e) of Section 344, *supra*, applies to common carriers which comment notes that ". . .it may not be enough for the servants of the public utility to give a warning, which might be sufficient if it were merely a possessor holding its land open to the public for its private business purposes. A utility may be required to take additional steps to control the conduct of third persons or otherwise protect the patron against it."

Petitioner, in its Brief to the Court of Appeals for the Third Circuit, failed to respond to and chose to ignore the case of *Moran v. Valley Forge Drive-In Theater, Inc., supra,* together with Section 344 of the Restatement (Second) of Torts (1965) and Section 314A-1(a) of the Restatement of Torts 2d, *supra.* Instead of Petitioner responding to this body of authority raised by Respondent, Petitioner based it legal position on the proposition that in Pennsylvania the duty of care of a common carrier to its passengers is not to provide around-the-clock protection. Pennsylvania law only imposes liability on the carrier for injury to its passengers in certain unusual situations involving acts of third persons but only after it has knowledge of actual danger to its passengers or from the particular facts or circumstances surrounding the incident should reasonably anticipate such danger. Petitioner further asserts that in order to impose liability, the carrier must be placed on notice either from criminal acts of violence committed at the

same location on prior occasions or the particular offending party must indicate a disposition to engage in criminal or tortious conduct. However, Petitioner does not accurately state the present law in Pennsylvania as recited in *Moran v. Valley Forge Drive-In Theater, Inc., supra; Morgan v. Bucks Associates,* 428 F.Supp. 546 (E.D. Pa. 1977); *LaSota v. Philadelphia Transportation Co.,* 421 Pa. 386, 219 A.2d 296 (1966); *Regelski v. F.W. Woolworth Co.,* 423 Pa. 524 (1967).

On the one hand, Petitioner acknowledges that a common carrier has the duty to anticipate foreseeable dangerous conduct of third persons, but on the other hand, Petitioner claims that it must have notice that previous criminal conduct occurred at a specific location and that the particular offending party must give indication of a disposition to engage in such activity.

In *Moran v. Valley Forge Drive-In Theater, Inc.,* the Supreme Court of Pennsylvania clearly adopted Section 344 of the Restatement of Torts and held that it is not necessary for defendant to be specifically aware of the exact location where patrons might be injured by the tortious acts of third persons. It is sufficient to establish a jury question which shows the defendant had notice of prior acts committed by third persons within their premises which might cause injury to patrons. Further, it then becomes a question of fact for the jury to determine whether adequate measures were taken to prevent acts on the part of third persons which might injure patrons. The same rationale was adopted in the decisions of *Morgan v. Bucks Associates, supra; Ford v. Jeffries, supra;* and *Anderson v. Bushong Pontiac Co., supra.*

In *Regelski v. F.W. Woolworth Co., supra,* the rationale of the Supreme Court of Pennsylvania did not limit the introduction of prior incidents to the exact place on the premises where the injury occurred. *Regelski v. F.W.*

Woolworth Co., supra, permits the introduction of testimony to other places on the premises where prior incidents involving injury to patrons occurred. The *Regelski* case cites with approval the decision of *LaSota v. Philadelphia Transportation Co., supra.*

In *LaSota v. Philadelphia Transportation Co., supra,* the Supreme Court of Pennsylvania clearly held that a common carrier is under a duty to protect its passengers and cannot escape the tortious responsibility for failing to prevent injury to its patrons for conduct that which could reasonably anticipate or had within its purview to prevent. In *LaSota,* the plaintiff attempted to introduce evidence as to notice of previous incidents but defendant's counsel objected and the Court sustained these objections as was the case in Kenny. However, the Supreme Court clearly stated that "it would indeed be an anomaly now that a defendant should receive a new trial based upon an error of its own making." (at page 394). In the present case, Respondent's counsel attempted to introduce into evidence prior criminal occurrences throughout the Frankford Elevated Line but defense counsel objected and the Court sustained these objections. Now, Petitioner claims that Respondent did not produce sufficient evidence to establish prior occurrences which could have reasonably been anticipated by the Petitioner in order to impose liability.

The Kenny case was submitted to the jury for certain factual determinations and the jury could have found Petitioner negligent in several ways because of its failure to protect the plaintiff. The Court of Appeals for the Third Circuit carefully examined the ways in which the jury could have found SEPTA negligent and specifically set forth those reasons in its Opinion (A17, A18).

The Court of Appeals for the Third Circuit did not ignore the common carrier cases in its Opinion. It properly applied the body of law decided by the Pennsylvania Supreme Court with regard to carrier cases and with regard to those cases governing a possessor of land who holds it open to the public for business purposes.

Petitioner urges that the Court of Appeals for the Third Circuit's holding imposes a duty on a transportation system to provide security guards and that such decision could place a ruinous financial burden on a mass transportation system. However, the holding of the Court of Appeals does not impose such a burden on SEPTA. On the contrary, it only imposes a duty upon SEPTA to utilize adequate and reasonable measures to protect patrons from injuries caused by the conduct of third persons. The record in the Kenny case clearly establishes that the Petitioner took no steps whatsoever throughout its entire Frankford Elevated Line to protect its patrons or to insure their safety. The attitude of Petitioner can be characterized as one of "do nothing" with regard to passenger security, and SEPTA attempts to escape its responsibility to its passengers within the framework of legal niceties as it has presented in the instant case. The Petitioner should not escape its legal liability under the facts of this particular case and the record clearly demonstrates that it provided no security protection whatsoever to its passengers and permitted the elevated platform stations to remain in defective and dangerous conditions which could not prevent crime but only encourage it.

II. The Petitioner's second argument is that a Federal Court of Appeals in Attempting to Ascertain State Law Governing Controlling Decisions of the State's Appellate Courts Treating Identical Legal Issues and Facts. In the instant case, there is no reason to reverse the Opinion and Order of the Court of Appeals for the Third Circuit on the basis that the federal judiciary should be stopped from creating a body of state substantiative law that differs from the law of the forum thereby encouraging litigation in the federal system.

In the present case, the Court of Appeals was not confronted with two distinct and contradictory bodies of law in Pennsylvania governing the liability of a common carrier and possessor of land who holds it open to the public for business purposes. The Petitioner has improperly created this distinction involving two separate and contradictory bodies of law in Pennsylvania cases in order to maintain this Petition for a Writ of Certiorari under the jurisdiction conferred by 28 U.S.C. Sec. 1254(1) and Rule 19(1)(b) of the Rules of this Court.

The Court of Appeals for the Third Circuit clearly demonstrated its awareness of this Court's holding under the doctrine of *Erie R.R. v. Thompkins, supra,* when it considered the particular facts and circumstances of the present case and cited the recent decisions of the Pennsylvania Supreme Court in those cases involving the proprietor of a business establishment, which in this case also happens to be a common carrier.

The cases cited by Petitioner in support of its present position were also cited by Petitioner in its written Brief to the Court of Appeals for the Third Circuit. Petitioner claims that the Court of Appeals for the Third Circuit ignored these decisions advanced by Petitioner. However, the Court of Appeals did have the cases advanced by Petitioner at its disposal and considered these cases not to be applicable in light of the existing body of law in Pennsylvania governing the factual situation in the present case.

The Court of Appeals below did not ignore the carrier cases decided by the Pennsylvania Supreme Court because it referred to such cases in its Opinion. However, Petitioner chose to ignore in its Brief the cases and authorities specifically relied upon by Respondent in Respondent's Brief to the Court of Appeals for the Third Circuit.

The Court below did not disregard Pennsylvania carrier cases and rest its holding upon a movie theater case in defining SEPTA's duty. On the contrary, the Court of Appeals below carefully considered the law in Pennsylvania as it applied to the factual circumstances presented in the present case and did not disregard the controlling decisions of the Appellate Courts of Pennsylvania.

Petitioner urges this Honorable Court to grant a Writ of Certiorari in order to prevent a stampede to the federal district courts by plaintiffs injured on the SEPTA lines in muggings, thefts and other assaults. However, Respondent urges this Honorable Court to consider the fact that perhaps persons would not be injured on the SEPTA lines if SEPTA would take reasonable measures to protect its patrons from the tortious conduct of third parties where the possibility or likelihood of such tortious activity could reasonably be foreseen or anticipated. SEPTA should not continue its policy of providing no security measures for the protection of its patrons or be permitted to maintain its elevated platform stations in a dangerous and defective condition and thereafter attempt to escape its legal liability on the premise that SEPTA would incur a financial burden and the floodgates of litigation would be open to the public.

This case does not present the problem wherein a holding of the Court of Appeals for the Third Circuit conflicts with the existing body of state law in Pennsylvania. On the contrary, in this diversity case, the existing body of law in Pennsylvania was clearly applied by the Court of Appeals for the Third Circuit and Petitioner seeks a review of such holding because it conflicts with Petitioner's belief of what the law of Pennsylvania should be.

Conclusion

Because of the issues presented in the foregoing argument, this Court should dismiss the instant Petition for a Writ of Certiorari to review the judgment of the Court of Appeals below.

Respectfully submitted,

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